THE EUB (ADR) PROGRAM

SECOND ANNUAL REPORT

JANUARY- DECEMBER 2002

APPROPRIATE DISPUTE RESOLUTION

EUB Alberta Energy and Utilities Board

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ADR OVERVIEW

The Alberta Energy and Utilities Board's (EUB's) Appropriate Dispute Resolution (ADR) Program, officially launched on January 8, 2001, helps potentially affected parties understand resolution options and processes that can assist them in developing a clear understanding of their outstanding concerns and issues, discuss the interests, and have them jointly develop and agree on resolution options. The two main elements of the ADR program are EUB staff facilitation and/or third-party mediation.

EUB staff facilitation: staff assist parties in understanding regulatory requirements and help them generate mutually agreeable options. Facilitation normally occurs prior to submission of an application but after the company has attempted to resolve concerns. Staff normally assists through direct meetings or by calling each of the parties.

Third-party mediation: used to develop win-win situations when dealing with more complex disputes. Parties have control of the solution when deadlines are of concern, when multiparty disputes exist, and when it is difficult to engage the other side. The first step of this component is a Preliminary ADR meeting (PADR), at which parties, assisted by a mediator, discuss procedures and reach agreement on next steps required, which often involves mediation.

If partial resolution or no resolution results from the facilitation, mediation, or other ADR alternative, then an EUB hearing will likely be required.

Extensive monitoring and evaluation of participant feedback was implemented when the ADR program was launched.

Positive feedback strongly supports ADR

Feedback was received on 25 out of the 27 mediations conducted. The majority of the 21 landowners, 38 company representatives and 6 lawyers/advisors gave favourable responses with 92 per cent touting the benefits of the process. A record 88 per cent also indicated they would recommend the benefits of the ADR process to others.

Most users ranked the ADR process as fair and effective, with two-thirds of 2002 users ranking all elements of the program satisfactory or better. In addition,

- 91 per cent of participants ranked the quality of service from EUB staff to be satisfactory or better.

Almost all users felt the involvement of EUB staff was critical to a successful resolution, as the staff added an element of fairness and credibility and were able to ensure that realistic expectations were established.

- 85 per cent of respondents indicated they increased their understanding of the other side's concerns.
- 80 per cent indicated the process was worthwhile.

Only 5 participants indicated they would probably not use ADR again. The main reason cited was insufficient upfront screening of issues, process concerns, or a lack of honest discussions surrounding the potential for success of the various ADR options.

HIGHLIGHTS OF THE 2002 ADR PROGRAM

The vast majority of disputes addressed by the program were resolved through EUB staff facilitation or third-party mediation:

- 84 per cent of EUB staff facilitations ended with full resolution, compared to 85 per cent in 2001:
  - 198 EUB staff facilitations were initiated, compared to 161 in 2001; 154 were completed, compared to 115 in 2001; and 129 were resolved, compared to 98 in 2001.
- 85 per cent of the 20 mediations with company/landowners resulted in full resolution, compared to 82 per cent (17 mediations/13 resolved) in 2001.
- 71 per cent of the 7 company-to-company mediations resulted in full resolution, compared to 3 mediations (100 per cent) being fully resolved in 2001.

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SUGGESTIONS FOR IMPROVEMENT

The users of the ADR program provided the following key suggestions for improvement:

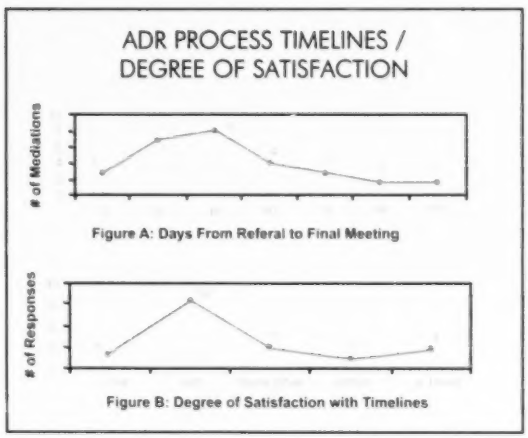
- Establishing timelines and shortening the duration of the overall process
- Improving clarity of process through the PADR meeting
- Clarifying costs for PADR and mediation meetings
- Improving ADR design for difficult or multiparty disputes
- Reducing concerns to minimize conflicts

Establishing timelines and shortening the duration of the overall process

Parties using EUB staff facilitations were pleased with the service. There were no concerns expressed on time used to arrange facilitation meetings or their duration. EUB staff facilitations were usually organized within several days. On average, staff spent one day per dispute. On the more complex issues, as much as 3 to 4 days were spent.

Most parties using mediation were pleased with the time it took to resolve issues with two thirds of mediations concluding within 40 days (figure A).

In 2002, on average it took 21 days to organize and hold a PADR meeting that was typically 3 hours in length. On average, it took 6 days from the PADR meeting to the first mediation session, which took up to 10 hours. Twelve out of 27 mediations were completed after a single meeting, 7 required a second meeting, and 8 required multiple meetings.


ADR PROCESS TIMELINES /
DEGREE OF SATISFACTION
# of Mediations
Figure A: Days From Referal to Final Meeting
# of Responses
Figure B: Degree of Satisfaction with Timelines

A correlation exists between timelines associated with the ADR process and degree of satisfaction realized. As timelines increase (Figure A) satisfaction decreases (Figure B). Thirteen participants involved in 3 mediations in 2002 expressed these kinds of timing concerns. Reasons included multiple meetings involving multiple parties and ongoing, unresolved differences.

A key to resolving duration concerns is the parallel ADR/hearing path. EUB staff process an application leading to a EUB Board decision while the parties involved simultaneously use the ADR process. The PADR meeting and subsequent mediation can be conducted in parallel and do not delay application processing or timelines connected to an EUB hearing.

Note that a Board decision on the need and timing of a hearing cannot be considered until EUB staff have assessed that the application is technically complete. In 2002, this assessment included a compliance audit with respect to EUB requirements. In 2002, most duration concerns were related to the time it took to set a hearing date.

Improving clarity of process through the PADR meeting

Some users, both industry and landowners, in each of the 5 unresolved mediations expressed the view that mediation was not effective because procedure and evaluation of options were not conducted at the PADR meeting. Recommendations for improvement included open and honest dialogue on items that can include hidden agendas, a lack of disclosure, timeline/deadline inflexibility, the need for lawyers and advisors (either during or at the end of mediation) and a better understanding of issues that could be resolved through ADR.

An "informed, objective no to mediation" conclusion may be a satisfactory outcome of a PADR meeting should the parties prefer other options. These options include continuing negotiations without assistance from a mediator, seeking expert opinion, engaging arbitration, or going to an EUB hearing.

In 2002, 38 PADR meetings were conducted. Of these, 11 did not proceed to mediation, 5 sets of parties decided to resume negotiations, 2 requested EUB staff facilitation, 1 used binding arbitration, and 3 decided on an EUB hearing. All but 4 of the mediations were

conducted in a parallel application/hearing process, and 9 hearings were cancelled as a direct result of successful ADR processes.

At the PADR meeting, parties, mediators, and EUB staff must discuss and agree on what degree of regulatory involvement is required. Parties strongly emphasized the important role of EUB staff, which includes the clarification of regulatory requirements, jurisdiction, enforcement and compliance.

Many of the landowners and company representatives identified the benefits of having EUB staff help establish a reasonable framework for the dialogue and the importance of providing information on options and possible outcomes.

Clarifying costs for PADR and mediation meetings

Although there was an increase in average costs for third-party resolution services to $6,800 in 2002 from $4,300 in 2001, the costs are still much lower than for a hearing. This average cost increase was situation specific, due to an increased number of complex or multiparty disputes and increased follow-up, travel, and overtime. Average costs in 2002 were

- $3,100 for the PADR meeting, ranging from $2,160 for a two-party meeting to $5,390 for a multiparty meeting, and
- $3,500 for a mediation meeting, ranging from $2,000 for a two-party meeting to $5,800 for a multiparty meeting.

Companies pay for the PADR meeting costs and, following discussion at the PADR meeting, typically cover costs of mediation services as well as lawyers and advisors, should the need be identified. In 2002, lawyers and advisors were involved in 10 of the 38 PADR meetings and 7 of the 27 mediations. Costs varied with the number of parties participating and the number and duration of meetings. Some companies expressed concerns about costs associated with involving lawyers and advisors and what the companies considered was the high cost of numerous meetings.

Improving ADR design for difficult or multi-party disputes

Difficult situations exist when parties are very positional, inflexible, and unwilling to engage in any dialogue. In company/landowner disputes, this may be due to a history of problems and relationship issues. In these situations, it is important that the parties have one-to-one discussions with the service provider or mediator to clarify concerns and discuss flexibility and options to ensure that an effective PADR meeting can be conducted.

Difficult company-to-company disputes are often a result of the parties being positional, inflexible, unwilling to disclose information, or unwilling to engage in open, timely, face-to-face dialogue. In these situations, the ADR program's parallel path allows EUB staff to process any applications that would lead to a Board decision while companies attend a PADR meeting to discuss, evaluate, and hopefully agree, on resolution options.

The need to improve ADR design as it relates to the multiparty process was identified in 2002. Concerns raised included

- when to conclude public involvement and negotiations and when to use ADR tools and techniques;
- how to engage groups and individuals and determine whether a different approach is needed for "directly impacted" parties than for "interested parties";
- how to reconcile individual issues in conjunction with local or regional issues;
- how to deal with multiple parallel meetings and processes, including sign-off after each meeting and ensuring necessary follow-up.

As each multiparty situation is unique, it is recommended that companies plan and incorporate ADR tools and techniques into their notification and negotiation strategies as part of overall project planning.

Reducing concerns to minimize conflicts

The EUB expects the applicant to identify, notify, and attempt to resolve concerns from potentially affected parties. As illustrated in the table on the following page, the vast majority of parties were able to successfully resolve concerns without third-party assistance. The ADR program was implemented to provide parties with additional tools to assist in their resolution efforts and, although very successful, it only needed to deal with a little over 1 per cent of 2002 applications.

Although the number of disputes addressed by the non-routine application (outstanding objections) process and ADR was low in comparison to the total number of applications, these disputes were usually associated with high emotions and required a significant amount of time, effort, and cost to resolve. Numerous cases escalated because parties failed to take time to clearly understand the other side's needs and interests and then engage in a process to jointly generate, evaluate, and agree on options.

Participants and mediators provided the following suggestions to minimize the escalation of concerns:

- **Improve direct communications**
  - Avoid switching people in the process, use consistent contacts
  - Ensure that clear follow-up procedures are implemented
  - Provide timely response and updates
  - Avoid long periods without contact
  - Deal with historical issues, not only current issues
- **Improve disclosure and provide mechanisms to increase understanding**
  - Make it easier to interpret technical and complex material
  - Establish clear expectations on what, how, and when information is provided
- **Improve negotiations**
  - Recognize time and resources required by both sides
  - Avoid pressure tactics but agree on timelines
  - Involve people with authority to resolve the issue early in the discussions
  - Take the time to clearly understand each other's concerns

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Application type	Applications	Objections from Landowners Companies	EUB staff facilitations*	Pre-ADR meetings*
Wells	14,679	237 L	148	13
Pipelines	9832	159 L	32	3
Facilities	1828	148 L	22	4
Spacing	565	75 L/107 C	21	13
Pooling	37	22 C		2
Common Carrier or Processor	5	5 C	1	6
Rateable Take	1	1 C		1

* Some facilitations or PADR meetings dealt with multiple applications

2003 Priorities for the ADR Program

A multiparty committee representing industry, public, and landowner groups has been directly involved in ADR development, monitoring, and subsequent evaluation and reporting to stakeholders. The committee maintains the roster of mediators and provides advice to the EUB on changes and improvements to the ADR program. The committee has developed the following priorities for 2003.

Monitoring the program: The committee encourages EUB staff to ensure that the high return rates of feedback forms associated with the ADR process continue and that emphasis be placed on receiving comment from parties where mediations were not successful.
Increase ADR awareness: The committee notes the high need to increase awareness and training based on feedback from users of the ADR program. The committee recommends that the EUB, stakeholder associations, and others consider

- continuing the rollout of the EUB's ADR program through talks to various public and industry groups and associations;
- developing short workshops and information sessions that could inform potential users of ADR options;
- assisting a company-to-company (C2C) task force that makes companies more aware of benefits and uses of ADR;
- organizing a round table discussion with senior industry and EUB personnel to discuss concerns involving the relationship of ADR to the application and hearing process;
- supporting various ADR training initiatives like ones now used by Olds College and the Canadian Association of Petroleum Landmen (CAPL).

Implementation of suggestions for improvement: Successful implementation of suggestions for increasing the effectiveness of EUB staff in the PADR meeting and the use of the parallel ADR/hearing path will be a priority for the ADR coordinator. Further, the coordinator will work with mediators and service companies to improve the PADR and mediation meeting effectiveness and ensure follow-up.

ADR COMMITTEE

Bill Remmer, ADR Coordinator, EUB, Committee Chairman

Dave Brown, Sundre Petroleum Operators Group (a synergy group)

Bob Garies, Canadian Association of Petroleum Landmen

Dave Gould, mediation community

Alan Holt, Wild Rose Agricultural Producers

Judy Huntley, Alberta Environmental Network

Mark Johns, electric industry

Dean Lien, Farmers Advocate, Alberta Agriculture, Food and Rural Development

Dave Savage, Small Explorers and Producers Association of Canada (SEPAC) and Calgary Chamber of Commerce Dispute Resolution Committee

Vacant, Canadian Association of Petroleum Producers (CAPP)

Stan Schumacher, Surface Rights Board, Alberta Sustainable Resource Development

Stuart Simpson, mediation community

Arden Berg, EUB Board sponsor

Brad McManus, EUB Board sponsor

Mika Madunicky, EUB Advisor

Stephen Smith, EUB Advisor

Additional information on the EUB's ADR program is available in the EUB Informational Letter (IL) 2001-1 Appropriate Dispute Resolution (ADR) Program and Guidelines for Energy Industry Disputes, on the EUB Web site: www.eub.gov.ab.ca, or from Bill Remmer, ADR coordinator (403) 297-8174, bill.remmer@gov.ab.ca

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